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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1952.

No. 686

TEAMSTERS AND TRUCK DRIVERS LOCAL NO. 164, AMERICAN FEDERATION OF LABOR, et al.,
Petitioners,

vs.

THE WAY BAKING COMPANY, a Michigan Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Michigan.

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vs.

THE WAY BAKING COMPANY, a Michigan Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Michigan.

To the Honorable, the Justices of the Supreme Court of the United States:

Petitioners respectfully pray that a Writ of Certiorari issue to review the decision and judgment of the Supreme Court of Michigan, entered in the above-entitled case on the 5th day of January, 1953.

OPINIONS BELOW.

The opinion of the Circuit Court for Jackson County (R. 216) is unreported. The opinion of the Michigan Supreme Court is reported in 335 Mich. 478, 56 N. W. 2d 357 (Adv. Op.), and appears at R. 266.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257 (3) of Title 28, U. S. C.

In this case a judgment of the Supreme Court of the State of Michigan and a Michigan Statute, Section 423.17, C. L. 1948 (as amended by Act No. 230, P. A. 1949) [Michigan Statutes Annotated, Section 17.454 (18)], upon which such judgment is purportedly based, are drawn in question upon the ground that said statute as applied in the instant case and as construed in the opinion and judgment of the Supreme Court of the State of Michigan, and the judgment on its face, are repugnant to:

(a) Section 1 of the Fourteenth Amendment to the United States Constitution, in that they deprive petitioners of liberty without due process of law, and deprive petitioners of the equal protection of the law; and

(b) Article I, Section 8, and Article VI of the United States Constitution by reason of which exclusive jurisdiction over the subject matter of this case is vested in the National Labor Relations Board under the provisions of the Labor Management Relations Act, 1947, 61 Stat. 136; 29 U. S. Code, Section 151 et seq.

The decision of the Michigan Supreme Court, the last resort of all causes in the State of Michigan, was in favor of the validity of the statute as applied in the instant case and in favor of the validity of the judgment.

Petitioners argued before the Circuit Court for the County of Jackson (Defendants' Answer at R. 27-29), and before the Supreme Court of the State of Michigan (Decision at R. 273, 277, 278, 280), that the decree and Michigan Statutes Annotated, Section 17.454 (18), as applied to the instant case, are unconstitutional and void and of no effect whatsoever, because repugnant to the provisions of the

United States Constitution referred to immediately herein above.

The federal question of whether the Michigan statute in question, and the judgment purportedly based on said statute, violated the Constitution of the United States was raised, therefore, before every tribunal before which argument was heard.

The Supreme Court of the State of Michigan held that neither the statute, nor the judgment based on such statute as construed, deprive the petitioners of any rights guaranteed under the Fourteenth Amendment to the Constitution of the United States or interfere with federal supremacy under the Commerce Clauses of the federal Constitution.

In its decision the Michigan Supreme Court ruled:

> "The contention advanced by appellants that the injunction issued by the trial court operates as an unwarranted interference with their right of freedom of speech under the First and Fourteenth Amendments to the Federal Constitution is fully answered by the cases above cited, particularly the decision of the United States Supreme Court in **Building Service Employees International Union, Local 262, et al. v. Gazzam**" (R. 280).

It further ruled:

> "We are not in accord with appellants' claim that the National Labor Relations Act as amended by the Labor Management Relations Act of 1947 must be construed as vesting sole and exclusive jurisdiction in the National Labor Relations Board, and hence as precluding the State Court from exercising jurisdiction, under the factual situation presented by the record. Rights of the character asserted here by plaintiff are recognized and protected by the State statute

above quoted, the purpose of which is in keeping with that of the Federal law'' (R. 280).

Thus the Michigan Supreme Court has held that the State of Michigan can validly prohibit all picketing when a purpose to protect union standards is joined with a purpose to persuade non-union employees to join the union; that such prohibition of peaceful picketing is not in violation of the Fourteenth Amendment to the Constitution of the United States; and that the state assertion of jurisdiction does not interfere with exclusive federal jurisdiction over the same subject.

A copy of the entire Record in this case as certified to be true and correct by the Clerk of the Michigan Supreme Court is hereby furnished and made a part of this application, in compliance with Rule 38, Paragraph 1, of the Rules of this Court.

QUESTIONS PRESENTED.

1. Whether a state may by statute or judicial decree prohibit peaceful picketing for organizational purposes.

2. Whether a state may by statute or judicial decree prohibit peaceful picketing at the point of sale of products delivered by non-union employees, such picketing being directed solely at such products.

3. Whether a state interferes with the exclusive jurisdiction of the federal government when it assumes jurisdiction over matters which, on the basis of the bill of complaint (and the subsequent conclusions of the court) would constitute violations of federal law, the jurisdiction over which matters are confined by such law to a federal agency and the federal courts.

STATUTES INVOLVED.

The pertinent state statutory provision is Section 423.17 of the Compiled Laws of the State of Michigan, 1948 [Michigan Statutes Annotated, Section 17.454 (18)], which reads as follows:

> **"Use of force or unlawful threats with respect to labor organization membership or to force person to refrain from employment; penalty.** It shall be unlawful (1) for any employee or other person by force or unlawful threats to force, or attempt to force, any person to become or remain a member of a labor organization, or (2) for any employee or other person by force or unlawful threats to force or attempt to force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such."

The pertinent federal statute on the jurisdictional question presented is set forth in Appendix A.

STATEMENT.

Petitioners (hereinafter referred to as the "Union") represent, for the purposes of collective bargaining, most of the driver-salesmen employed in the wholesale baking industry in Jackson, Michigan. On behalf of its members, it engages in collective bargaining negotiations with two major bakeries in that area (R. 71-72). However, none of the driver-salesmen employed by the respondent Way Baking Company (hereinafter referred to as the "Company" or "employer") are members of the Union, and, accordingly, it neither represents such employees in collective bargaining negotiations nor has it made any demand upon the Company for recognition, for a contract, or to compel such employees to join the Union (R. 46, 176). Numerous attempts have been made to enroll the non-union driver-salesmen into membership (R. 98, 101-102, 105, 113-114, 115-116, 121, 171).

The Union's efforts to improve the wages and other conditions of employment of its members at the two wholesale bakeries that are competitive to the respondent company have been impeded by the fact that the respondent company pays a lower commission rate to its employees than the competitors are required to pay under union contract, makes Sunday and holiday deliveries, requires its employees to "box stops," and generally does not provide its employees with other advantages of the union contract (R. 47, 71-73, 104; Defendant's Exhibits A and B).

The union members protested against the existence of this situation which jeopardized continuance and improvement of their own working conditions (R. 48, 72-73, 80). Accordingly, to bring the situation to the attention of the public, and in furtherance of its purpose to protect the union standards by either organizing the non-union driver-salesmen or diverting patronage to the union members, the Union embarked on a picketing program (R. 48, 81).

Picketing took place at the premises of the Company by no more than two pickets at any one time who walked on the public sidewalks in the area of the plant carrying signs stating (R. 67, 76, 85):

"Employees of
WAY Baking Co.
are NOT members of
Truck Drivers Union
Local 164, A. F. of L.
We Are Not Asking Anybody To
Cease Their Employment."

(Defendants' Exhibit C, R. 213.)

It is conceded that only peaceful picketing took place (R. 74). No union members were requested to stop work (R. 9, 195) nor were any vehicles prevented from entering the Company's premises (R. 74-75, 91, 92, 130).

A building addition was in process of construction at the Company at the time the picketing was instituted. No person employed in such construction was ever requested not to go through the picket line (R. 91), although, pursuant to prior understandings, the Union notified a company employing union drivers that a picket line had been established at the plant (R. 93-94). This arrangement was at the request of the employer who wished to eliminate the possibility of additional expense if his employees refused to make a delivery (R. 94). Some employees of the general contractor, of their own free will and accord, refused to cross the picket line, whereas others crossed the picket line without interference (R. 157). An employee of a plumbing subcontractor voluntarily refused to cross the picket line (R. 166). The excavating contractor, on his own initiative, instructed his men not to work while the plant was being picketed (R. 168). No contractor or subcontractor, or employee employed at the respondent's plant

was ever instructed not to perform services on that job (R. 97).

On January 23, 1950, pickets were placed at a number of retail food stores which sold the Company's products (R. 49).

Prior to the picketing at those stores, union representatives had advised the proprietors that a labor dispute existed, and that the union intended to publicize the existence of such labor dispute by means of informative picketing in front of said stores, apprising the public of the unfair labor conditions at the Way Baking Company and thereby encouraging the purchase of union-delivered bread (R. 49-50, 83-84, 88-90). It was explained that the picketing was to be directed only against "Kleen-Maid Bread," Company's trade name for the bread (R. 51, 83-84). Accordingly, the signs carried at the stores read:

"Please Don't Buy
Kleen-Maid Bread
That Is Sold Here.
Employees of Way Baking Co.
Are Not Members
Truck Drivers Union
Local 164, A. F. of L.
We Are Not Asking Anybody to Cease
Their Employment."

(Defendants' Exhibit D, R. 213.)

Notably, the sign emphasized that it was the Company's products and not the store itself that was being picketed (R. 49). No more than one picket at a time walked in front of the stores with the exception of one store which had a front and a rear entrance, and, therefore, one picket was assigned to each entrance (R. 76).

No interruptions in deliveries occurred at the stores at which Kleen-Maid Bread was picketed (R. 75, 145, 147, 149)

with the exception of one delivery by a truck whose driver, on his own volition, refused to cross the picket line (R. 146-147). No attempt was made to stop any persons or vehicles from entering such establishments (R. 91, 95). Although the employees of the stores were members of a union affiliated with the American Federation of Labor, the picketing was not for the purpose of, nor did it result in, disturbing the normal operations of the stores (R. 91, 159).

Pickets were also placed at two restaurants in the vicinity of the union hall, both of which used respondent's products (R. 49, 160-161, 162). These picket signs read as follows (Defendants' Exhibit E, R. 44):

"Kleen-Maid Bread
Served Here Is Delivered by
Non-Union Drivers.
Please Ask for Bread
Delivered by Members
Truck Drivers Union
Local 164—A. F. of L.
We Are Not Asking Anybody to Cease
Their Employment."

On petition of the Company, an ex parte restraining order was issued by the Circuit Court for the County of Jackson on January 28, 1950, restraining petitioners from any activity in connection with this dispute; whereupon petitioners withdrew the two pickets from the area of the respondent's plant, the picket at each of the stores selling respondent's bread and the picket at the restaurants serving respondent's bread; and cancelled their plans to further publicize the dispute (R. 18, 225). After trial, the temporary restraining order was made permanent (R. 239-240).

The permanent decree was affirmed by the Michigan Supreme Court on January 5, 1953. The decree, as affirmed, provides as follows (R. 239-240):

"It is ordered, adjudged and decreed: That the defendants and their officers, agents and representatives, and each of them, do absolutely and entirely desist and refrain from:

"1. Picketing the plant and places of business of the plaintiff, and/or the places of business of plaintiff's customers, for the purpose of forcing or attempting to force the employees of plaintiff to become or remain members of a labor organization, or for the purpose of forcing or attempting to force plaintiff to compel its employees to become members of a labor organization, or any other unlawful objective.

"2. Engaging in, or inducing or encouraging the employees of any employer to engage in a concerted refusal in the course of their employment to use, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services for the purpose of preventing the delivery of such goods, articles, materials, or commodities to or from the plaintiff.

"3. Forcing or requiring or attempting to force or require any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of the plaintiff, or to cease doing business with the plaintiff.

"4. Threatening or ordering boycotts against persons supplying goods to plaintiff or making deliveries of goods to and from the plaintiff or purchasing goods from plaintiff or selling goods to plaintiff."

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of the State of Michigan erred:

1. In holding that the decree of the Circuit Court for the County of Jackson permanently restraining petitioners from engaging in peaceful picketing was valid and not in violation of the rights of the petitioners as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. In holding that Section 423.17 of the Michigan Statutes Annotated, as applied to the instant case, was not in contravention of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States, and, therefore, not void in such application.

3. In holding that the exercise of jurisdiction by the state in this case did not contravene the provisions of Article I, Section 8, and Article VI of the Constitution of the United States.

REASONS FOR GRANTING THE WRIT.

I.

The Judgment and the Statute as Construed and Applied Are in Violation of Rights Secured to the Petitioners by the Fourteenth Amendment to the Constitution of the United States.

The decision and judgment of the Michigan Supreme Court in this case represents another, though more extreme, example of the type of situation called to the attention of this Court in the Petition for Writ of Certiorari in the case of **International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., et al., v. Harold Postma et al.,** 334 Mich. 347, 54 N. W. (2d) 681 (Case No. 446, October Term, 1952; petition filed November 13, 1952).

It was pointed out in that petition that the State of Michigan, in purported reliance upon previous decisions of this court approving injunctions against peaceful picketing for "unlawful labor objectives" (**Carpenters & Joiners Union v. Ritter's Cafe,** 315 U. S. 722; **Giboney v. Empire Storage & Ice Co.,** 336 U. S. 490; **Hughes v. Superior Court,** 339 U. S. 460; **International Brotherhood of Teamsters v. Hanke,** 339 U. S. 470, and **Building Service Employees International Union v. Gazzam,** 339 U. S. 532), is restraining peaceful picketing for organizational and publicity purposes under the guise of state statute which prohibits "forcing" an employee to become or remain a member of a labor union.

Here again, by reason of such statute, and such statute only, admittedly peaceful picketing for the purpose of advertising the non-union status of truck drivers who sell and deliver bakery goods, has been restrained. Addi-

tionally, here admittedly peaceful picketing at the retail stores handling the bakery products sold and delivered by the non-union driver-salesmen, with placards clearly directed only to the product and requesting the public to refrain from purchasing such product, has also been restrained.

Again, the Michigan Supreme Court, confusing the probable results of peaceful picketing with the legitimate purposes for such picketing, has found an "unlawful labor objective" because of frank admissions that the union hoped that diversion of patronage to union-delivered bread would induce the non-union employees to join the union.

And, as in the **Postma** case, supra, the Michigan Court undertakes to make its own determination that the conditions under which the non-union drivers work "compared favorably with those of the members of defendant union engaged in like work for plaintiff's competitors" (R. 269) in the face of uncontroverted facts to the contrary (R. 47, 71-73, 104). It was precisely because of the more favorable conditions of employment fixed by union contract that employers under contract with the union were reluctant to either maintain or improve such conditions while the employees of a major competitor were not covered by a similar contract (R. 47, 71-73).

It is submitted that the suggestion of the Michigan Court that under the undisputed facts the petitioner had no lawful interest in the working conditions of the non-union employees sufficient to justify peaceful picketing cannot be reconciled with the holdings of this Court in **American Steel Foundries v. Tri-City Central States Council**, 257 U. S. 184, 209; **Senn v. Tile Layers**, 301 U. S. 468; **Thornhill v. Alabama**, 310 U. S. 88; **Carlson v. California**, 310 U. S. 106; **American Federation of Labor v. Swing**, 312 U. S. 321; **Bakery and Pastry Drivers v. Wohl**, 315 U. S. 769; **Cafeteria Employees Union v. Angelos**, 320 U. S. 293.

The vital question posed by the Michigan decisions is whether, absent either improper methods of picketing or unlawful demands, the bare fact of economic injury resulting from peaceful picketing will support a purported finding of fact (which is in actuality a conclusion of law), that the picketeers were "motivated by an improper purpose," and thus subject to restraint. In other words, is effectiveness of the picketing to be the test of its propriety under the Fourteenth Amendment to the Constitution?

This court has answered the question in the negative in **Senn, Thornhill, Swing, Wohl** and **Angelos**, supra, all of which cases recognized that while peaceful picketing may cause economic injury, such picketing may no more be restrained because of such possible or probable results than may any other expression of opinion which might induce adverse action.

Yet the Michigan Court persists in testing the legality of picketing by its possible effect, thus reasoning backward from the fact of injury to find an unlawful purpose.

In the instant case, the picketing took place at three different types of geographical locations:

(1) At the place of business of the employer where the bread was baked and loaded onto the truck, and where the employer generally conducted his business with the public. Here the placard stated the true fact that the employees were **not** members of the Union.

(2) At the retail stores to which the non-union drivers delivered the bread for resale to the consumer. Here the placards requested the public not to buy the bread because it was delivered by non-union employees.

(3) At restaurants near the union office and meeting hall. Here the placards urged the customer to ask for bread delivered by members of the Union.

Such picketing, it is to be noted, was clearly confined to either the fact that the employees of respondent were non-union, or to the products delivered by such non-union employees. Other trade with the retail stores was not aimed at, nor was it affected. There was no concert of activities against the stores or restaurants. Other deliveries to such stores continued, and union members employed in such stores continued to work.

The picketing was not preceded by any unlawful demand made upon the employer. It was not accomplished by any improper or deceptive means.

But because it could normally be anticipated that such picketing would injure the business of the employer and bring about loss of commission earnings of the non-union employees, the Court found that the picketing was for the unlawful purpose "to compel plaintiff (employer) to insist that said employees join the Union, and likewise to force said employees to do so for their own protection" (Decision at R. 270).

It is to be emphasized that this conclusion is based **only** upon the fact of picketing and the union's frankly expressed **hope** that such picketing might persuade the non-union employees to join the union because of diversion of business to members of the union.

If picketing to advertise the fact of the non-union status of competing employees in the distribution of bakery products and to divert the consumers' patronage to the union-sold and union-delivered bread, becomes unlawful "force" directed to the non-union employees and their employer, only because of the actual or probable diversion of business to union members, then the pronouncements of this court that peaceful picketing is an exercise of rights guaranteed by the Fourteenth Amendment to the Constitution are meaningless, and the constitutional right is drained of all substance.

It is submitted that this Court has already rejected the type of reasoning upon which Michigan rests its decision in a case of marked similarity. In **Bakery and Pastry Drivers v. Wohl**, 315 U. S. 769, there was involved actual and threatened picketing of persons engaged in the distribution of baked goods, including threatened picketing not only of the product but of the retail outlet as such. This Court there said (p. 775):

> "So far as we can tell, respondents' mobility and their insulation from the public as middle men made it practically impossible for petitioners to make known their legitimate grievances to the public whose patronage was sustaining the peddler system except by the means here employed and contemplated; and those means are such as to have slight, if any, repercussions upon the interests of strangers to the issue."

With respect to the latter part of the above statement, it is to be noted that the record here fails to disclose any "repercussions" upon the stores or restaurants handling the employer's bread, if, in, economic fact, such stores or restaurants could be considered "strangers to the issue." See **Goldfinger v. Feintuch**, 11 N. E. 2d 910 (N. Y.); **Fortenbury v. Superior Court**, 106 P. 2d 411 (Calif.); **Mason and Dixon Lines v. Odom**, 185 S. E. 2d 841 (Georgia); **Johnson v. Milk Drivers Union**, 195 So. 791 (La.); **Restatement, Torts**, Vol. IV, Para. 799.

Petitioners respectfully submit that it is impossible to reconcile the holding of the Michigan Court with this Court's decision in **Wohl**, supra, or with other decisions of this Court affirming the right to peacefully picket "in a manner traditional in labor dispute" (**N. L. R. B. v. Rice Milling Co.**, 341 U. S. 665, 671), or "directed at employees for organization purposes" (**Building Service Employees International Union v. Gazzam**, 339 U. S. 532).

Nor is this case ruled by the recent decision of this Court in **Local Union, etc., v. Graham** (No. 86, October Term, 1952, decided March 16, 1953). In the latter case, as in preceding cases sustaining state court injunctions directed to peaceful picketing, there was evidence in the record to support the lower court's finding that the picketing was for the purpose of coercing an employer to accede to a demand made by the Union that it engage in a course of conduct violative of state law or policy. But in the instant case, the "crucial finding" that the picketing was to force the employer to violate state law or to force the non-union employees in violation of state law, rests solely upon the fact and possible effects of peaceful picketing. There is no evidence, nor is there any finding by either trial or appellate court, that any unlawful demands were made. The Michigan Court's conclusion with respect to purpose, therefore, can only be based upon the assumption that picketing which results in loss of business might induce the employer to violate the law, and, therefore, it was the purpose of the union to compel such violation and to accept its fruits.

Similarly, the Michigan Court's conclusion that the picketing was to force the employees to join in the union in violation of state law rests only on the Michigan Court's theory that since peaceful picketing may cause loss of business to both the employer and the non-union employees such picketing may properly be equated with the term "force" as used in the state statute.

While the decree herein purports to limit picketing "for the purpose of forcing or attempting to force the employees of plaintiff to become or remain members of a labor organization, or for the purpose of forcing or attempting to force plaintiff to compel its employees to become members of a labor organization, or any other unlawful objective" it is in effect a complete ban on all picketing in view of the improper conclusions of the state court that the picket-

ing actually was for such purpose. In face of such conclusion, all picketing is effectively restrained since it is the probable result of the picketing which has become the measure of its legality. Therefore, neither a change in the language of the picket sign (which is factually correct) nor an announced change of purpose to advertise the non-union status of the employees could put petitions in a different or more favorable position under the theory of the Michigan Court. Nor could petitioners advertise such non-union status and at the same time control the response of others to such advertising so as to meet the state court's basic objection that the unlawfulness of the picketing is measured by the public's reaction to it.

This petition therefore (as does the petition in Case 446, October term, 1952) squarely presents the situation cautioned against in **Milk Wagon Drivers v. Meadowmoor Dairies, Inc.**, 312 U. S. 287, 293, 294, 299, in that the state court here has actually defeated the guarantees of the Bill of Rights by "insubstantial findings of fact screening reality" or through "spurious findings of fact."

II.

The Purported Exercise of Jurisdiction by the State Courts in This Case Is Violative of Article I, Section 8, and Article VI of the Federal Constitution Because an Invasion of the Exclusive Jurisdiction Vested in the National Labor Relations Board by Federal Statute.

The Bill of Complaint in the instant case charged that the activities of the Union were designed to:

(a) force and coerce employer to require its employees to join the union; (b) force or coerce the employer to enter into an agreement with the union recognizing the union as the collective bargaining agent contrary to the will of such employees; (c) force or coerce the employees

to join the union against their will through means of a secondary boycott; (e) prevent the employer from carrying on its business (Bill of Complaint, Paragraph XVI, R. 13-14).

The Bill of Complaint further alleged that such activities were in contravention of the Statutes of the United States, as well as of the State of Michigan, and prayed for relief by way of an injunction couched in language similar to that found in Section 8 (b) (4) of the Labor Management Relations Act, 1947 (Bill of Complaint, Paragraphs XVIII and XX, R. 14-15).

These allegations of the Complaint, if true, charge violation of the provisions of Sections 8 (b) 1 (A) and 8 (b) 4 (A) of the Federal Act. **Capital Service, Inc., v. National Labor Relations Board,** 31 L. R. R. M. 2326 (CA 9, Jan. 30, 1953).

The Union, by answer, alleged that the business of the employer was such that exclusive jurisdiction over the subject matter of the complaint was vested in the National Labor Relations Board by federal legislation and that therefore the ex parte temporary injunction, already granted, or any permanent injunction which might be entered, and any statute or law on which such injunctions may be based, would be null and void because contrary to Article I, Section 8, and Article VI of the Constitution of the United States (Defendant's Answer, Paragraph 21, R. 28-29).

In support of this defense the union offered evidence with respect to the nature of the wholesale bakery business carried on by the company, including its purchases of substantial quantities of raw materials from suppliers outside the State of Michigan, the sale of the Company's products to factories producing goods for interstate commerce, and the fact that the National Labor Relations Board had

earlier assumed jurisdiction over the employment relationship at a competitor located in the same city (R. 129-130, 136, 152, 184-185; Deft's Exh. F, R. 214).

After the adverse decision of the trial court holding that the Union's activities were in violation of both the Taft-Hartley Act and the state statute and policy (R. 231) and further holding that the state's power in this matter was not affected by the federal regulation, but that such federal legislation actually confers jurisdiction in the state courts, petitioners filed a Motion for Rehearing and requested permission to supplement the record with further evidence in support of their claim that the business of the employer affected interstate commerce within the meaning of the Taft-Hartley Act. This further evidence was deemed pertinent by petitioners in view of the fact that, after the trial on the merits in this case, the National Labor Relations Board had decided a series of cases in which it set forth certain criteria by which it would be guided in ascertaining whether to assume jurisdiction over a particular controversy covered by the federal Act (R. 246-248).

This request for further hearing was denied, the trial court adhering to its position that even if the case fell within the administrative criteria, "it would still be the duty of the court to determine whether interstate commerce existed as a question of law, based upon Michigan and United States Supreme Court decisions and not upon any artificial yardstick created by an administrative board to facilitate the dispositions of its volume of cases" (Decision, Trial Court, at R. 251).

Similarly, the Michigan Supreme Court, although relying in part on the federal law in support of its decision, held that whether the business of the employer affected interstate commerce within the meaning of the federal law was an issue of fact to be determined by the trial court, and further held the Labor Management Relations Act

could not be construed as vesting exclusive jurisdiction in the National Labor Relations Board over the factual situation presented (Decision, R. 277-280).

This very insistence of the state courts to determine, as a matter of state law, whether the activities of the union affected commerce within the meaning of the federal law, while at the same time looking to the federal law to support their findings that the activities of the union were unlawful, and couching their judgments in the language of the federal law, demonstrates clearly the need for application of the principle that in the passage of the federal law the Congress intended to, and did vest exclusive jurisdiction over such matters in the federal agency. The decisions of this court, both under the original law and under the amended law, affirm this principle, at least as to matters specifically covered by the Act. **Amalgamated Association, etc., v. Wisconsin Employment Relations Board,** 340 U. S. 383, 397, 398; **Automobile Workers v. O'Brien,** 339 U. S. 454; **Plankinton Packing Co. v. Wisconsin Employment Relations Board,** 338 U. S. 953; **La Crosse Telephone Corp. v. Wisconsin Employment Relations Board,** 336 U. S. 18; **Bethlehem Steel Co. v. New York State Labor Board,** 330 U. S. 767.

The lower federal courts and state supreme courts have similarly so held: **Capital Service, Inc., v. National Labor Relations Board,** supra; **National Labor Relations Board v. Ozark Dam Constructors,** 190 F. 2d 222; **Amazon Cotton Mill Co. v. Textile Union of America,** 167 F. 2d 183; **Amalgamated Association v. Dixie Motor Coach Corp.,** 170 F. 2d 902 (C. A. 8); **Costaro v. Simons,** 98 N. E. 2d 454 (N. Y.); **Norris Grain Co. v. Nordaas,** 46 N. W. 2d 94 (Minn.); **Ex Parte de Silva,** 199 P. 2d 6 (Calif.); **McNish v. American Brass Co.,** 89 A. 2d 1566 (Conn.), cert. denied, Jan. 5, 1953; **Gerry v. Superior Court,** 194 P. 2d 689 (Calif.); **Garner v. Teamsters Union,** 31 L. R. R. M. 2392 (Pa.).

It is submitted that the question considered sufficiently vital to justify the granting of certiorari in **Montgomery Building & Construction Trades Council v. Ledbetter Erecting Co.**, 57 So. 2d 112 (Ala.), certiorari denied for lack of final judgment, 344 U. S. 178, is here presented for adjudication as a final judgment of the state supreme court.

CONCLUSION.

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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March ..., 1953.

APPENDIX A.

NATIONAL LABOR RELATIONS ACT.

* * * * * * *

"Section 8 * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: * * *

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) * * *."

* * * * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, where an object thereof is: (A) forcing or requiring * * * any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *

* * * * * * *

"Section 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. **Provided**, that the Board is empowered by agreement with any

agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provisions of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

* * * * * * *

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HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 686

TEAMSTERS AND TRUCK DRIVERS LOCAL No. 164, AMERICAN FEDERATION OF LABOR, et al.,
Petitioners,
vs.
THE WAY BAKING COMPANY, a Michigan corporation,
Respondent

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITIONERS' PRAYER FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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STATEMENT

The issues before this Court should be stated clearly. The Statement contained in petitioners' brief is deficient since certain inaccuracies, misstatements and omissions

leave an erroneous impression and require both correction and addition.

In the first place, petitioners say (Page 6 of their brief) relative to the economic comparison of wages and conditions of union drivers as opposed to the non-union drivers of respondent:

> "The Union's efforts to improve the wages and other conditions of employment of its members at the two wholsale bakeries that are competitive to the respondent company have been impeded by the fact that the respondent company pays a lower commission rate to its employees than the competitors are required to pay under union contract, makes Sunday and holiday deliveries, requires its employees to 'box stops' and generally does not provide its employees with other advantages of the union contract (R. 47, 71-73, 104; Defendant's Exhibits A and B)".

To the contrary is the finding of the Michigan Court (R. 269) that:

> "The conclusion is fully supported by testimony that the compensation paid by plaintiff to its driver salesmen, and the general conditions of employment existing compared favorably with those of the members of defendant union engaged in like work for plaintiff's competitors."

based upon the record and particularly the following:

Respondent's employees are guaranteed $75.00 per week (R. 149) as compared to petitioners, which were $55.00 per week for Michigan Bakeries and $45.00 per week for Continental Baking Company (R. 193, 203). While the Record does not show what petitioners' drivers actually received (and the lack of this showing is significant as it was readily amenable to proof by petitioners), respond-

ent's drivers averaged $96.19 weekly take-home pay after deductions in May, 1950, just before the trial.

And for the year 1949, the average pay had been $99.74 per week for respondent's drivers after all deductions (R. 149), or $111.88 per week before such deductions. They also had one week vacation with pay after a year and two weeks with pay after three years (R. 127).

Respondent's extra drivers had a greater guarantee than petitioners' regular drivers, this having been $60.00 a week, below which none of the extra drivers ever dropped; none of them, as a matter of fact, having received less than $75.00 per week for a number of years before the trial (R. 127).

It is somewhat difficult to follow petitioners' argument relative to respondent's providing "boxed stops", mentioned in the brief as these were for the benefit of regular drivers and the service was provided by respondent hiring extra drivers (R. 127). So, too, is the argument concerning Sunday deliveries hard to comprehend. Such deliveries were also made by extra men, the commission on the sales and service afforded being credited to the account of the driver on whose route they occur (R. 127).

Petitioners also omit the unanimity of respondent's employees (R. 171) that they did not desire to join petitioners' union nor had they ever been discouraged by management from so doing if they chose (R. 99, 102, 105, 112, 114, 117, 121, 170 and 171).

Furthermore, the picketing was apparently considerably more energetic and effective than indicated by petitioners at page 7 of their brief, the testimony clearly showing that more than one truck making deliveries to respondent's bakery backed out and went away (R. 128); that pickets stopped trucks of Davis Truck Line with card-

board trays (R. 150), a Hy-Grade Truck with lard (R. 151), Associated Truck Lines with wholewheat flour (R. 151), Norwalk Truck (R. 151) and Consolidated Truck with cellophane (R. 151), all ingredients and services necessary for the manufacture and delivery of respondent's product (R. 148, 152). Seven of respondent's outlets were lost as the result of the union activities (R. 136).

So, too, does the statement of petitioners minimize union coercion relative to construction at respondent's plant during the picketing. The excavating contractor ordered his men to quit the job after receiving a call from one of petitioners' officers (R. 167) and petitioner Manning, himself, was mentioned by the proprietor of the Ready Mix Concrete firm as warning (R. 139), "They had a picket line there to the Way Baking Company and that our drivers could not go through it".

Petitioners seek to impress that the entire activity of petitioners Manning and Green and members of petitioner union was for publicity only and without thought of coercion. On page 8 of their brief, it is stated:

> "Prior to the picketing at those stores, union representatives had advised the proprietors that a labor dispute existed, and that the union intended to publicize the existence of such labor dispute by means of informative picketing in front of said stores, apprising the public of the unfair labor conditions at the Way Baking Company and thereby encouraging the purchase of union-delivered bread (R. 49-50, 83-84, 88-90). It was explained that the picketing was to be directed only against 'Kleen-Maid Bread', Company's trade name for the bread (R. 51, 83-84)."

Diametrically opposed is the Record, petitioner Green explaining his activities (R. 56, 57) as follows:

"Q. What did you expect to accomplish by these picket lines? What was the objective?

A. We thought that by having the picket line, the public wouldn't buy as much of the bread as there had been, thinking maybe that would induce the members of the Way Baking Company to join our union and be along with our boys that was working on a different wage scale than they was.

* * * * *

Q. In other words, is that what you are saying? That because these drivers would not be able to sell as much bread that they would be obliged to join your union so that these customers would take Way's bread?

A. We felt that they would—it would be an inducement for them to join our union.

Q. You thought that they would be induced, when their sales fell off, to get into your union, is that it?

A. Right.

* * * * *

Q. And you knew, of course, that their pay depended upon the amount of sale that they made.

A. Yes, sir.

Q. So that your idea was that by depriving them of part of their pay you would compel them to join your union. Is that it?

A. We thought that would induce them to join our union."

And petitioner Manning testified (R. 83), as follows:

"Q. You said that you would picket their store —or advertising, if you want to put it that way— unless they threw out Way's bread, didn't you?

A. Didn't say nothing about throwing out. Just asked them if they would go along with us.

Q. What did you mean by 'go along'?

A. Well, throw it out.

* * * * *

Q. You made it clear to them, didn't you that if they would throw Way's bread out you would not set up a picket line? Didn't you?

A. If they throwed Kleen-Maid, I wouldn't put up a picket line? That's right.

Q. That is right. So the test of whether or not a picket line was set up in front of any particular store was whether they threw it out of their store?

A. I told them I was going to advertise that Kleen-Maid was unorganized."

Each of the above excerpts from the Record are quoted by the Michigan Supreme Court (R. 269, 270).

ARGUMENT AND LAW

I.

THE COURTS OF MICHIGAN HAVE THE RIGHT AND POWER TO ENJOIN PICKETING, THE PURPOSE OF WHICH IS TO ACHIEVE AN UNLAWFUL LABOR OBJECTIVE

Since the petition was filed in this case, this Court has denied the writ of certiorari in another decision of the Michigan Court (*Postma v. Local Union #406,* 334 Mich. 347) involving a similar decree enjoining a union where an unlawful labor objection was sought.

International Brotherhood of Teamsters and Chauffeurs, etc. v. Postma, 345 U. S. ... (April 6, 1953.)

The decision and judgment of the Supreme Court of the State of Michigan (R. 265-281, inclusive), is completely in harmony with the rules which that Court has laid down in the following series of Michigan cases:

Silkworth v. Local 575, A. F. of L., 309 Mich. 746;
Harper v. Brennan, 311 Mich. 489;

Standard Grocery Company v. Local #406, A. F. of L., 321 Mich. 276;
Sand and Gravel Co. v. Trades Council, 321 Mich. 361, and
Postma v. International Brotherhood of Teamsters, Chauffeurs, etc., Local #406, supra.

It is equally in harmony with the decisions and rulings of this Court, and particularly *Giboney, et al. v. Empire Storage & Ice Co.*, 336 U. S. 490; *International Brotherhood of Teamsters, et al. v. Hanke*, 339 U. S. 470, and *Building Service Employees International Union, et al. v. Gazzam*, 339 U. S. 532; also, *International Brotherhood of Teamsters, etc. v. Postma, et al., supra*, and *Local #10, United Association of Journeymen Plumbers, and so forth, et al. v. Graham, et al.*, 345 U. S. ..., March 16, 1953.

As in the *Postma* case, the pertinent section of the Michigan statute involved is:

> "It shall be unlawful (1) for any employee or other person by force or unlawful threats to force, or attempt to force any person to become or remain a member of a labor organization, or (2) for an employee or other person by force or unlawful threats to force or attempt to force any person to refrain from engaging in employment. Violations of this section shall be a misdemeanor and punishable as such." C. L. 1948, paragraph 423.17, as amended by Act 230 of the Public Acts of Michigan of 1949 (Sec. 17.454 (18), M. S. A.).

Similarly, are the provisions of the National Labor Management Relations Act of 1947, Section 7 of which provides (61 Stat. L. 140, 29 U. S. C. A., Supp. Sec. 157):

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to

bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

Section 8(a) of the Federal Act which follows, states:

> "It shall be an unfair labor practice for an employer
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7."

And Section 8(b) states, in part:

> "It shall be an unfair practice for a labor organization or its agents
>
> (1) to restrain or coerce employees in the exercise of the rights guaranteed in Section 7."

The Michigan Court, after quoting such provisions of the Michigan law, as well as of the Taft-Hartley Act, states in its decision (R. 271-272):

> "The quoted provision of the state statute as well as of the Federal law are clear. Obviously, they are directed at practices of the character involved in the instant case. No claim is made that there is any conflict between the state statute and the Act of Congress."

After consideration of the purpose of petitioners in their activities of picketing at the plant, the stores and restaurants, the State Court quotes the testimony of petitioners

Green and Manning hereinbefore set forth (R. 269-279), and holds:

> "We think the testimony in the case clearly supports the claim of the plaintiff, and the finding of the trial judge, that the defendants were undertaking by their picketing activities to so injure the business of the plaintiff, and to bring about such a loss of commissions on the part of plaintiff's driver salesmen, as to compel plaintiff to insist that said employees join the union and, likewise, to force said employees to do so for their own protection. That such a purpose may not be regarded generally as a lawful labor objective is clearly stated by the language of the state statute as well as by the Labor Management Regulations Act of 1947, commonly referred to as the Taft-Hartley Act."

This case is very similar to that of the *Standard Grocery Company, supra,* which the Michigan Court stated was "closely analogous" (R. 272), and in which it had been pointed out that there was admittedly no labor dispute between respondent and its employees. Here, as in the *Standard Grocery* case, *supra,* and in the *Postma* case, *supra,* if there was any unfairness or difference of opinion it was between respondent's employees and petitioner union. Respondent's employees just did not want to join petitioner union, but if such choice was unfair to petitioners, the action was that of the employees rather than of the respondent through its officers whom the Record shows allowed the union to have meetings with its employees and did not discourage membership.

So. too, is the case similar upon its facts to the *Gazzam* case, *supra,* where the rights of a small group of employees for determination of their economic status and future were threatened and where their freedom of action and choice

were jeopardized by economic pressure. Here, the injunction issued by the trial court (R. 242) was meticulously drafted to fit the facts here and the language of the Michigan Supreme Court in the *Standard Grocery case, supra,* at page 302.

As was said by this Court in the *Gazzam* case, page 541:

> "The injunction granted was tailored to prevent a specific violation of an important state law. The decree was limited to the wrong being perpetrated, i. e., 'an abusive exercise of the right to picket', *Cafeteria Employees Union, Local #302, v. Angelos,* 320 U. S. 295."

The Record here fully discloses the picketing as a part of an organized effort on the part of petitioners to coerce by economic pressure respondent's employees or respondent in a pattern completely similar to that in both the Michigan and the Federal cases cited above. We have reference especially to the testimony of petitioners Green and Manning hereinbefore quoted as to the purpose.

To accomplish such purpose, petitioners clothe themselves in the language of the First and Fourteenth Amendments to the Constitution of the United States, seeking to have this Court overlook concomitant rights equally, if not more absolute—rights of freedom of choice and of action—rights which guarantee to all freedom from economic pressure and equal protection of the laws.

Where there is evidence in the Record to sustain the findings of the Michigan Court, it is assumed that it will not be necessary to cite authority that this Court will not pass upon questions of fact.

By its decision (R. 268), the Michigan Court found that with the exception of one, vacationing and, hence, unavail-

able, driver salesman of respondent, all testified that they did not desire to join petitioner union and that they were satisfied with the conditions of their employment.

The Michigan Court so found (R. 269) and concluded its holding (R. 276, 277):

> "Appellants insist that the trial judge was in error in concluding that the attempt on the part of defendants to induce stores, hotels and restaurants to refrain from purchasing plaintiff's products constituted a secondary boycott. We think the evidence fully supports the finding. Obviously, the clearly indicated threats to establish picket lines, if the requests of the representatives of the union were ignored, were coercive. The conclusion cannot be avoided that picketing with signs of the character displayed in the instant case would have a strong tendency to discourage prospective customers from entering the picketed place of business. The purpose unquestionably was, as stated by defendant Manning, to interfere with the sale and distribution of plaintiff's products, thus causing injury to plaintiff and its employees, as well as injury and damage to the business establishments that were actually picketed. With reference to such phase of the union's activities, defendant Green testified, referring to conversations between representatives of the union and proprietors or managers of establishments against which pressure was exerted:
>
> > 'We told them we intended to picket the bread if it kept going in there. In other words, we told them if they continued to buy Way's bread that there would be a picket line in front of their place.'"

We are not here faced with factual situations such as those of the cases cited in petitioners' brief. The question

here presented is squarely upon the attempt of petitioners to coerce by economic pressure the employees of respondent to join a union not of their choosing and in violation of the state law; or to force this result by pressure upon respondent, itself.

This was an unlawful labor objective prohibited by the statutes of the State of Michigan similar in language and in objective to the statutes of other states which this Court has held constitutional.

II.

THE MICHIGAN COURT HAD, AND PROPERLY EXERCISED, JURISDICTION OF THE ISSUES INVOLVED

Peitioners' argument relative to jurisdiction vested in the National Labor Relations Board is incorrect for these reasons:

(1) Under criteria of the National Labor Relations Board, itself, and offered by petitioners, respondent's business was not such that that Board would assume jurisdiction and it had not, in fact, so attempted.

(2) Interstate commerce was not affected as was held by the State Court and fully supported by the Record.

(3) The Michigan and Federal laws relative to rights and to coercion are in complete harmony.

1. Upon motion for rehearing (R. 243), petitioners brought to the attention of the trial court a memorandum of the National Labor Relations Board establishing "standards which will govern its exercise of jurisdiction under the Taft-Hartley Act".

Whether or not the trial court, in denying the motion, R. 251) was correct in holding this formula: "merely n administrative yardstick laid down by the Board for the urpose announced in its release hereinbefore first quoted" s somewhat academic since the test mentioned did not pply to respondent. The release to which reference was ade was of October, 1950 (R. 250) in which the National abor Relations Board "reiterated its policy of not exercis- ng jurisdiction despite its power to do so of business op- erations so local in character that a labor dispute would be unlikely to have a sufficient impact upon interstate com- merce to justify an already burdened Federal board in ex- pending time, energy and public funds". The formula limited the jurisdiction of the Board to enterprises having a direct inflow of material valued at $500,000 a year or more or an indirect inflow valued at $1,000,000 a year, or more.

The yardstick can have no application here despite peti- tioners' urgence in their motion for rehearing since respon- dent's total purchases in 1949 were "in the neighborhood of $350,000" (R. 152).

The National Labor Relations Board policy to which pe- titioners were there referring may be found in Labor Rela- tions Cumulative Digest, 1948-1951, at page 214, where standards in which the Board had stated that it would exercise jurisdiction were listed: Instrumentalities of com- merce; public utility and transit systems; integral parts of multi-state enterprises; enterprises producing goods for out-of-state shipment; those furnishing necessary materials and services to operate businesses in interstate commerce at more than $50,000 a year, and those substantially affect- ing national defense—concluding with the following:

> "Any other enterprise which has (a) a direct inflow of material valued at $500,000 a year; or

(b) indirect inflow of material valued at $1,000,000 a year; or (c) a combination inflow or outflow of goods where the percentages of minimum amount bought or sold inter-state directly or indirectly at up to 100%. This computation involves adding percentages which are computed on four different bases—$25,000, $50,000, $500,000 and $1,000.000."

Citing *Rutledge Paper Products, Inc.*, 91 N. L. R. B. 625, 26 L. R. R. M. 1544, and *Dorn's House of Miracles*, 91 N. L. R. B. 632, 26 L. R. R. M. 1545.

Here it is clear (R. 152) that respondent's total purchases in 1949 were "in the neighborhood of $350,000", considerably less than the minimum standards as set forth by the Board in its statement of what did or did not affect the flow of interstate commerce. In other words, the National Labor Relations Board has said that in a case such as the instant one, it would not assume jurisdiction and does not consider transactions such as those of respondent to affect interstate commerce within the provisions of the Act.

It is obvious that the Board may rightfully withhold jurisdiction as was held by the 9th Circuit Court in *Haleston Drugstores v. N. L. R. B.*, 187 Fed. 2d 418 (certiorari denied by this Court, 342 U. S. 815). See also *N. L. R. B. v. Guy F. Atkinson Co.*, 195 Fed. 2d 141, 144. If, in the Board's opinion, interstate sales are not substantial enough to exercise jurisdiction, it does not abuse its discretion when it determines public interest does not require retention of jurisdiction. *Local Union #12, Progressive Mine Workers v. N. L. R. B.*, 189 Fed. 2d 1 (certiorari denied 342 U. S. 868).

What was held by the 9th Circuit Court of Appeals in *Capital Service, Inc. v. N. L. R. B.*, 31 L. R. R. M. 326, cited by petitioners in their brief, was that even in cases where

interstate commerce is present and there is an effect upon its flow, jurisdiction may still be withheld where there is an agreement to that effect with a state agency.

As fully established by the Record, the Board not only did not seek jurisdiction, but would not do so upon the basis of its own rulings which are to the effect that a business such as respondent's does not affect commerce. Especially is this correct where there occurs no conflict between Federal and State law and interpretation thereof as to the rights guaranteed.

2. Clearly from the Record (R. 6, 122), respondent's products are sold entirely within the State of Michigan, not does its inflow of material affect the flow of commerce by reason of the position of its plant with no railroad facilities, its methods of purchases and other attendant circumstances (R. 148, 152, ff) and the Michigan Court, reviewing the Record, so held (R. 277 and 278):

> "As before noted, plaintiff's bill of complaint alleged that it was without railroad facilities for the transportation of goods directly to its plant. It was further asserted that because of such situation it was necessary to convey flour, which it purchased for processing, from railroad yards to plaintiff's plant by trucks. Testimony of plaintiff's president disclosed that flour was the principal ingredient used in plaintiff's operations, and that some purchases thereof were made in Michigan and others outside the State. It was further stated that lard, another important ingredient, was purchased from local establishments maintained by corporations operating without the State. It cannot be said from this record that any materials purchased by plaintiff without the State and transported in interstate commerce were delivered in such transportation to plaintiff's plant. That the interstate transportation as to such materials

shipped by rail terminated at the warehouse of the carrier is apparent. The activities of the defendants of which the plaintiff complained did not affect transportation terminating at any point or points other than the plant itself where picketing was maintained. Whether interstate commerce was affected by such activities became, under the record in this case, an issue of fact. See *National Labor Relations Board v. Denver Building & Construction Trades Council, et al.*, 341 U. S. 675 (95 L. Ed. 1284 71 S. Ct. 943). The trial judge found that interstate commerce was not so affected, and we think that such finding was fully justified by the record.

"It clearly appears that plaintiff's driver salesmen, whom defendants sought to induce to join the union, were employed solely in intrastate commerce. They operated, as before noted, in the City of Jackson and surrounding territory. They did not make sales outside of Michigan. It was these employees in intrastate commerce against whom the unlawful labor objective was primarily directed."

The acts of petitioners here engaged in, aimed at unionization of respondent's drivers operating only in intrastate commerce, could hardly have been labor practices affecting commerce.

3. Furthermore, even if interstate commerce were present, which it is not, upon a review of the cases cited by petitioners, it is evident that the statutes therein at issue before this Court or the various state courts mentioned were at variance with national labor policy.

The holdings of the cases cited by petitioners at page 21 of their brief may perhaps be summed up from the language of this Court in *Bethlehem Steel Co., et al. v. New York State Labor Board*, 330 U. S. 767, 773:

"However, the power of the state may not so deal with matters left to its control as to stand 'as

> an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'; *Hill v. Florida ex rel. Watson,* 325 U. S. 538, 542."

So, too, in *International Union, etc. v. O'Brien,* 339 U. S. 454, this Court was dealing with a particular provision of the Michigan labor law which *conflicted* with the exercise of Federally protected rights.

It requires merely to read the cases cited by petitioners to quickly perceive that in those instances, this Court and the other courts mentioned had before them state statutes discordant with that of Congress. Here, the Michigan act seeks to protect and to guarantee certain rights and to prohibit the violation of those rights with precisely the same objective in mind as had the Congress, and with very similar language.

As the Michigan Court found (R. 271-272):

> "No claim is made that there is any conflict between the state statute and the Act of Congress."

and the entire Record, including the pleadings and the motion for rehearing (R. 243-247) is completely devoid of any such allegation or assertion.

A reading of the Michigan statute and the pertinent provisions relative to freedom of choice, right of organization and the restraining or coercion of employees in the exercise of such rights are in complete harmony with those of Congress as was pointed out by the state court (R. 280), where it said:

> "Rights of the character asserted here by the plaintiff are recognized and protected by the state statute above quoted, the purpose of which is in keeping with that of the Federal law."

It is, therefore, further submitted that the Michigan Court properly exercised its rightful jurisdiction and violates neither the Commerce Clause nor Article VI of the Constitution of the United States.

We therefore ask that the prayer of the petitioners for writ of certiorari be denied.

Respectfully submitted,

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